K-C 19,319
27839-01281

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Duane G. Krzysik, et al. Art Unit 1751
Serial No. 10/829,518
Filed April 22, 2004
Confirmation No. 7372
For LIQUID CLEANSER COMPOSITIONS
Examiner Necholus Ogden Jr.

APPEAL BRIEF

Christopher M. Goff, Reg. No. 41,785
ARMSTRONG TEASDALE LLP
One Metropolitan Square, 26th Floor
St. Louis, Missouri 63102
(314) 621-5070

TABLE OF CONTENTS

TABLE OF AUTHORITIES

REFERENCES

CASES

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Duane G. Krzysik, et al. Art Unit 1751
Serial No. 10/829,518
Filed April 22, 2004
Confirmation No. 7372
For LIQUID CLEANSER COMPOSITIONS
Examiner Necholus Ogden Jr.

September 15, 2008

APPEAL BRIEF

This is an appeal from the final rejection of the claims of the above-referenced application made in the final Office action dated March 28, 2008. A Notice of Appeal was filed on July 15, 2008.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is Kimberly-Clark Worldwide, Inc. of 401 N. Lake Street, Neenah, Wisconsin 54957-0349, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

II. RELATED APPEALS AND INTERFERENCES

Appellants are not aware of any pending appeals, which may be related to, directly affect or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-20, 22-40, and 42-56 are currently pending in the application for consideration. A copy of the claims involved in this appeal appears in the Claims Appendix of this Brief.

Claims 1-20, 22-40, and 42-56 stand rejected.

The rejections of claims 1-20, 22-40, and 42-56 are being appealed.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

With reference to the present specification, claim 1 is directed to a liquid cleanser composition comprising a lamellar structured liquid. See specification page 3, paragraph [0007]. The lamellar structured liquid comprises from about 30% (by weight) to about 80% (by weight) of a surfactant, from about 1% (by weight) to about 30% (by weight) of a lipid phase, and from about 19% (by weight) to about 69% (by weight) water. See specification page 3, paragraph [0007]. The lipid phase comprises from about 1% (by weight) to about 5% (by weight) of a sterol and from about 95% (by weight) to about 99% (by weight) of a natural fat or oil. See specification page 3, paragraph [0007]. The liquid cleanser composition has a viscosity of from about 10,000 cps to about 200,000 cps. See specification page 5, paragraph [0015]. The components of the lipid phase are microencapsulated. See specification page 16, paragraph [0037].

Claim 22 is directed to a liquid cleanser composition comprising a lamellar structured liquid. See specification page

3, paragraph [0008]. The lamellar structured liquid comprises from about 30% (by weight) to about 80% (by weight) of a surfactant, from about 1% (by weight) to about 30% (by weight) of a skin protectant, and from about 19% (by weight) to about 69% (by weight) water. See specification page 3, paragraph [0008]. The liquid cleanser composition has a viscosity of from about 10,000 cps to about 200,000 cps. See specification page 5, paragraph [0015]. The skin protectant is microencapsulated. See specification page 16, paragraph [0037].

Claim 42 is directed to a liquid cleanser composition comprising a lamellar structured liquid. See specification page 3, paragraph [0009]. The lamellar structured liquid comprises from about 30% (by weight) to about 80% (by weight) of a surfactant, from about 1% (by weight) to about 30% (by weight) of a sunscreen active, and from about 19% (by weight) to about 69% (by weight) water. See specification page 3, paragraph [0009]. The liquid cleanser composition has a viscosity of from about 10,000 cps to about 200,000 cps. See specification page 5, paragraph [0015]. The sunscreen active is microencapsulated. See specification page 16, paragraph [0037].

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appellants appeal the following rejections:

A. Claims 1-7, 10-18, 22-27, 30-38, 42-47, and 51-54 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,126,954 (Tsaur).

B. Claims 8-9, 28-29, and 48-50 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,126,954 (Tsaur) in view of WO 01/19949 (Mitra, et al.).

C. Claims 19-20, 39-40, and 55-56 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,126,954 (Tsaur) in view of U.S. Patent No. 3,829,563 (Barry, et al.).

VII. ARGUMENT

A. Claims 1-7, 10-18, 22-27, 30-38, 42-47, and 51-54 are submitted to be patentable over U.S. Patent No. 6,126,954 (Tsaur).

Claims 1-7, 10-18, 22-27, 30-38, 42-47, and 51-54 have been rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,126,954 (Tsaur).

Claims 1-7 and 10-18

Claim 1 is directed to a liquid cleanser composition comprising a lamellar structured liquid comprising from about 30% (by weight) to about 80% (by weight) of a surfactant, from about 1% (by weight) to about 30% (by weight) of a lipid phase, and from about 19% (by weight) to about 69% (by weight) water. The lipid phase comprises from about 1% (by weight) to about 5% (by weight) of a sterol and from about 95% (by weight) to about 99% (by weight) of a natural fat or oil, and the liquid cleanser composition has a viscosity of from about 10,000 cps to about 200,000 cps. The components of the lipid phase are microencapsulated.

Tsaur discloses a stable aqueous liquid comprising 5 to 45% by weight surfactant (selected from anionic, amphoteric, and nonionic), 0.1 to 5.0% by weight dispersed particles of cationic polymer, 1 to 30% by weight of a skin benefit agent emulsion having particle sizes in the range of about 0.1 to about 10 micrometers, and 1-30% by weight of water soluble skin benefit

agents. Liquid stability is achieved through the interaction of the dispersed cationic polymer particles and the small particle benefit agent emulsion, which form a network stable in the solution. Upon dilution with water, the dispersed cationic particles dissolve and interact with the benefit agent to form large oil aggregates, which allow for enhanced deposition of the benefit agent onto the skin. Significantly, Tsaur does not disclose a liquid cleanser composition having a viscosity of from about 10,000 cps to about 200,000 cps and comprising a lipid phase comprising from about 1% (by weight) to about 5% (by weight) of a sterol, wherein the components of the lipid phase are microencapsulated.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2142 requires a clear articulation of the reasons why the claimed invention would have been obvious. Specifically, the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the burden lies initially with the Office to provide an explicit analysis supporting a rejection under 35 U.S.C. 103. "[R]ejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."[1] The Court in *KSR International* further identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966). Specifically, as previously required by the TSM (teaching, suggestion, motivation) approach to obviousness,

[1] *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

one exemplary rationale indicated requires some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Specifically, to reject a claim based on this rationale, the Office must articulate the following: (1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings to arrive at each and every limitation of the claimed invention; (2) a finding that there was reasonable expectation of success; and (3) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness. The Examiner has failed to meet the burden under number (1) above, as the cited references fail to show each and every limitation of Applicants' invention and there is no apparent reason for one skilled in the art to modify the reference to arrive at each and every limitation. It simply would not have been obvious to one skilled in the art to arrive at Applicants' claimed combinations.

Initially, applicants submit that Tsaur fails to disclose a liquid cleanser composition comprising from about 1% (by weight) to about 30% (by weight) of a lipid phase, wherein the components of the lipid phase are microencapsulated. While Tsaur does state that the compositions disclosed therein may comprise 1 to 30% by weight of a skin benefit agent emulsion (which may comprise various fats and oils), there is nothing in Tsaur that suggests that the components of the skin benefit

agent emulsion used therein could or should be microencapsulated. In fact, it appears from the disclosure of Tsaur that microencapsulating the components of the skin benefit agent emulsion would in fact be detrimental to the desired properties and function of Tsaur's composition.

As noted above, Tsaur is directed to a stable aqueous liquid comprising a surfactant, dispersed cationic polymer particles, and small particle benefit agents. The stability of the compositions of Tsaur is achieved not through use of thickeners, but rather through the interaction of the skin benefit agent emulsion with the dispersed cationic polymer particles. The benefit agent emulsion interacts with the dispersed water soluble cationic polymer particles to form a stable network in the composition, thus acting to stabilize the skin benefit agent emulsion and prevent it from precipitating out of the solution.[2] It is this network, formed as a result of the interaction of the dispersed polymer particles with the emulsion of benefits agents, which is the key to the physical stability of Tsaur's liquid composition.[3] For instance, Tsaur states:

> Dispersed cationic polymer particle alone…might not be physically stable by themselves in the liquid cleanser. Without small oil droplet emulsion, these polymer particles precipitate to the bottom of the liquid composition during storage. With the addition of small oil droplet emulsion, the dispersed cationic particles interact with the oil droplet to form a stable network so that they will not precipitate out

[2] *See* Tsaur at col. 3, lines 61-66.

[3] *Id.* at col. 6, lines 62-65.

of solution even without the aid of additional structurant.[4]

Based on these disclosures in Tsaur, one skilled in the art would actually be lead away from encapsulating the components of the skin benefit agent emulsions described in Tsaur. Specifically, encapsulating Tsaur's skin benefit agents may prevent these benefit agents from interacting with the dispersed cationic polymers which, as noted above, is the key to providing stability to the compositions of Tsaur. Thus, encapsulating Tsaur's benefit agents, would render the compositions of Tsaur inoperative for their intended purpose (i.e., a stable aqueous liquid). In this regard, applicants note that "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification."[5] This is clearly applicable to the instant case.

Moreover, the Examiner has not explicitly set forth any reasons why the ordinarily skilled person would have encapsulated the components of the skin benefit agent emulsion of Tsaur. In the recently issued KSR International v. Teleflex Inc., 550 U.S. ___, ___, 82 U.S.P.Q.2d 1385 (2007), the Supreme Court has stated "it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." The Court also cited *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), stating: "("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements;

---

[4] *Id.* at col. 6, line 65 to col. 7, line 6.

[5] *See* MPEP §2143.01(V), citing In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness")."[6] *KSR International* at ____. In the instant case, the Examiner cannot meet this burden since, considered as a whole, the Tsaur reference does not provide (and the Examiner cannot articulate) any reason the ordinarily skilled person would encapsulate the components of the skin benefit agent emulsion disclosed in Tsaur.

In the Response to Arguments section of the Office action, the Examiner has stated that while Tsaur is silent with respect to microencapsulating the skin benefit agents described therein, it would have been within the purview of one of ordinary skill in the art to expect the skin benefit agents to comprise molecules that are encapsulated. The Examiner has, however, failed to provide any reasoning as to why one skilled in the art would modify the Tsaur reference to encapsulate the benefit agents described therein.

Applicants further submit that in suggesting it would be obvious to encapsulate the benefit agents disclosed in Tsaur, the Examiner appears to be ignoring the explicit teaching in Tsaur that stability of the compositions described therein is predicated on the ability of the benefit agents to interact with the dispersed cationic polymers present in the composition. The Examiner fails to, and indeed cannot, provide any reasoning as

[6] *See also Ex parte Clapp* ("To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.") 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985) (emphasis added).

to why one skilled in the art would be motivated to modify the teachings of the Tsaur reference in a manner that would render the compositions described therein unsuitable for their intended use (i.e., providing a stable aqueous liquid).

With regard to encapsulation, the Examiner has further stated that it is assumed that the compositions of the present invention are mixed and heated, which would further break down any form of microencapsulation in the final product.[7] With all due respect, applicants do not see the relevance of this statement. Whether or not applicants' claimed composition may be mixed or heated is irrelevant, as is the effect mixing or heating of the composition may have on encapsulation. What is important is what is defined by the claim language. In the instant case, applicants are claiming a liquid cleanser comprising a lamellar structured liquid comprising a lipid phase "wherein the components of the lipid phase are microencapsulated." This limitation is set forth in applicants' claim 1 and cannot be ignored in determining patentability over the cited reference.

Since Tsaur fail to disclose or suggest microencapsulating the benefit agents disclosed therein, and doing so would in fact render the compositions of Tsaur unsatisfactory for their intended purpose (i.e., providing a stable aqueous liquid), applicants submit that claim 1 is not obvious in view of Tsaur.

Additionally, applicants again note that Tsaur fails to disclose a lamellar structured liquid. As discussed in the specification of the present invention, the claimed liquid cleanser compositions are formulated such that the surfactant

[7] *See* p. 5 of the final Office action dated March 28, 2008.

present forms a lamellar phase in solution; that is, the surfactant forms lamellar-like sheets in the solution that form together like layers of an onion that prevent the skin benefit ingredient from raising to the surface or falling to the bottom of the composition. Because the lamellar structured liquids allow for long-term suspension therein of droplets of oils, particulates, or other components, emulsification of the suspended ingredient is not required to keep the suspended ingredient from settling out.[8]

In contrast to the lamellar structured liquids of the present invention, Tsaur describes stable liquid cleansers that comprise a skin benefit agent emulsion. More particularly, as noted above, Tsaur state that the dispersed polymer particles and an emulsion of benefit agents interact to provide the physical stability of the liquid composition and to keep the particles from precipitating out of the composition.[9] There is no disclosure or suggestion in Tsaur of using a lamellar structured liquid to suspend benefit agents in the composition, and no suggestion that a lamellar structured liquid is desirable or even necessary to achieve stable suspension of the benefit agents.

In the Response to Arguments section of the Office action, the Examiner has stated that it would have been obvious that the compositions of Tsaur comprise a lamellar phase given that Tsaur teaches compositions with varying viscosities and that form dispersions or particles. Applicants respectfully disagree with this position. For one, as discussed below, Tsaur fails to

[8] *See* Specification at ¶14-15.

[9] *See* Tsaur at col. 6, line 61 to col. 7, line 6.

disclose the viscosity of the stable compositions. The only viscosities given in Tsaur are for the pre-dispersion composition. Additionally, merely because Tsaur disclose particles dispersed in the compositions described therein does not mean the Tsaur compositions are lamellar structured liquids.

In this regard, applicants note that not all stable liquids are lamellar structured liquids. For instance WO 01/19949, cited by the Examiner in the final Office action, lists several different phases of structured liquids, stating: "As surfactant concentration increases, ordered liquid crystalline phases such as lamellar phase, hexagonal phase or cubic phase may form."[10] WO 01/19949 goes on to describe differences between these phases.[11] Tsaur, however, does not state that the compositions described therein are lamellar structured liquids, and the Examiner has not provided any reasoning as to why one skilled in the art would be motivated to produce a lamellar structured liquid given the disclosure of Tsaur.

Furthermore, as noted above, Tsaur achieves composition stability through a mechanism completely different than that of applicants' claimed compositions. In particular, Tsaur states repeatedly that physical stability of the composition described therein is achieved through interaction between the dispersed cationic polymers present in the composition and the benefit agents. It is this interaction that prevents the polymers (and the benefit agents) from precipitating out of solution. There is simply nothing in Tsaur that states or suggests that surfactant structure is responsible for composition stability or

[10] *See* WO 01/19949 at p. 1, ln. 21-23.

[11] *Id.* at p. 1, ln. 24 to p. 4, ln. 18.

more particularly, that stability is achieved through formation of a lamellar structured liquid. Claim 1 is thus patentable for this additional reason.

Additionally, as noted above, Tsaur, et al. fail to disclose or suggest a liquid cleanser composition having a viscosity of from about 10,000 cps to about 200,000 cps. With regard to viscosity, the Examiner has stated that Tsaur teaches that the pre-dispersion compositions have a viscosity of less than 100,000 cps. This, however, is not the viscosity of the cleansing composition disclosed in Tsaur. As noted above, the viscosity amounts cited by the Examiner refers to the pre-dispersion viscosity. More particularly, Tsaur states that cationic polymer is added to the liquid cleanser as a pre-dispersion that is prepared by mixing the solid polymer with water mixable ingredients (e.g., glycerol or propylene glycol) or an aqueous solution. It is the viscosity of this pre-dispersion that is given in column 6 of Tsaur, not the viscosity of the stable aqueous liquid in which the benefit agents are suspended. There is simply no disclosure of the viscosity of the stable aqueous composition.

Furthermore, there is no apparent reason for one skilled in the art to modify the teachings of Tsaur to arrive at a composition having applicants' claimed viscosity range. As discussed in the specification of the present invention, the stability of the structured liquid composition and the suspension of the oil or particulate skin benefit ingredient is significantly achieved by the viscosity of the liquid composition produced by the surfactant system present in the lamellar phase.[12] Within the claimed viscosity ranges, the

[12] *See* Specification at page 5, paragraph 15.

structured liquid cleansing product is stable and can suspend the skin benefit ingredient therein such that emulsification is not required to keep the skin benefit ingredient in the solution. In contrast, there is nothing in Tsaur that suggests that the stability of the compositions is dependent on viscosity of the composition, and nothing that would suggest to one skilled in the art that the compositions described therein should have a viscosity within applicants' claimed range.

Additionally, Tsaur fails to disclose a lipid phase comprising from about 1% (by weight) to about 5% (by weight) of a sterol. In the Response to Arguments section of the Office action, the Examiner has cited to column 7, line 48 and column 8, lines 1-10 of Tsaur as teaching that the compositions of Tsaur can comprise cholesterol as a benefit agent in the amount of 1 to 30% by weight. While applicants acknowledge that Tsaur states that cholesterol may be a benefit agent, and that the compositions of Tsaur may comprise 1 to 30 wt.% of benefit agents, this is not a disclosure of applicants' claimed amounts of sterols. In particular, the composition set forth in applicants' claim 1 comprises from about 1% (by weight) to about 30% (by weight) of a lipid phase, and the lipid phase comprises from about 1% (by weight) to about 5% (by weight) of a sterol and from about 95% (by weight) to about 99% (by weight) of a natural fat and oil. There is, however, nothing in Tsaur that teaches or suggests this particular combination of components for use in the skin benefit agent emulsions described therein, nor what amount of the 1 to 30 wt.% of the benefit agents would be cholesterol. In particular, in order to arrive at applicants' claimed lipid phase, one skilled in the art would have to select from a laundry list of eleven different types of

benefit agents[13] listed in Tsaur to combine lipids and fats and oils, with no guidance provided by Tsaur as to the benefits of this particular combination. One skilled in the art would then have to select cholesterol from among the listed lipids, and then determine that from 1 to 5% of the benefit agents in the benefit agent emulsion should be cholesterol and from 95 to 99% of the benefit agents in the benefit agent emulsion should be a natural fat or oil, again with no guidance provided by Tsaur as to why these selections should be made. Applicants respectfully submit that it is simply not obvious to make such a combination given the lack of guidance provided by the disclosure of Tsaur. Claim 1 is thus patentable over Tsaur for this additional reason.

In light of the foregoing, applicants submit that claim 1 is patentable over the Tsaur reference under §103(a).[14]

---

[13] Tsaur states that preferred benefit agents include the following groups: silicone oils, gums and modifications thereof; fats and oils; waxes; hydrophobic plant extracts; hydrocarbons; esters; essential oils; lipids; vitamins; sunscreens; and phospholipids. *See* Tsaur at col. 7, lines 15-57.

[14] Although the Examiner has not specifically rejected the claims under § 102, in setting forth the § 103 rejection, the Office states with regard to Tsaur "As this reference teaches all of the instantly required it is considered anticipatory." For the reasons set forth above, applicants submit that the claims are novel in view of Tsaur, as Tsaur fails to disclose each and every element of applicants' claim 1. In particular, Tsaur fails to disclose a liquid cleanser composition having a viscosity of from about 10,000 cps to about 200,000 cps and comprising a lamellar structured liquid comprising a lipid phase comprising from about 1% (by weight) to about 5% (by weight) of a sterol, wherein the components of the lipid phase are microencapsulated. In fact, in the Response to Arguments section of the final Office action (see page 5), the examiner admits that Tsaur does not disclose microencapsulating a skin

Claims 2-7 and 10-18 depend directly or indirectly from claim 1 and are thus patentable over Tsaur for the same reasons as set forth above for claim 1 as well as for the additional elements they require.

Claim 2

Claim 2 depends from claim 1 and further requires the lipid phase additionally comprise from about 0.5% (by weight) to about 2% (by weight) of a ceramide or ceramide derivative.

Claim 2 is patentable over Tsaur for the same reasons as set forth above for claim 1. Additionally, Tsaur fails to disclose or suggest a lipid phase comprising from about 0.5% (by weight) to about 2% (by weight) of a ceramide or ceramide derivative. While applicants acknowledge that Tsaur states that ceramides may be a benefit agent, and that the compositions of Tsaur may comprise 1 to 30 wt.% of benefit agents, this is not a disclosure of applicants' claimed amounts of ceramide or ceramide derivative. In particular, the composition set forth in applicants' claim 2 comprises from about 1% (by weight) to about 30% (by weight) of a lipid phase, and the lipid phase comprises from about 1% (by weight) to about 5% (by weight) of a sterol, from about 95% (by weight) to about 99% (by weight) of a natural fat and oil, and additionally from about 0.5% (by weight) to about 2% (by weight) of a ceramide or ceramide derivative. There is, however, nothing in Tsaur that teaches or suggests this particular combination of components for use in the skin benefit agent emulsions described therein, nor what amount of the 1 to 30 wt.% of the benefit agents would be

---

protectant, a sunscreen additive, or components of a lipid phase.

ceramide. In particular, in order to arrive at applicants' claimed lipid phase, one skilled in the art would have to select from a laundry list of eleven different types of benefit agents[15] listed in Tsaur to combine lipids and fats and oils, with no guidance provided by Tsaur as to the benefits of this particular combination. One skilled in the art would then have to select cholesterol and ceramides from among the listed lipids, and then determine that from 1 to 5% of the benefit agents in the benefit agent emulsion should be cholesterol, from 0.5 to 2% of the benefit agents in the benefit agent emulsion should be ceramides, and from 95 to 99% of the benefit agents in the benefit agent emulsion should be a natural fat or oil, again with no guidance provided by Tsaur as to why these selections should be made. Applicants respectfully submit that it is simply not obvious to make such a combination given the lack of guidance provided by the disclosure of Tsaur. Claim 2 is thus patentable over Tsaur for this additional reason.

Claim 13

Claim 13 depends from claim 2 and further states that the ceramide or ceramide derivative is selected from the group consisting of glucosylceramides, acylceramide, bovine ceramide, sphingolipid E, and combinations thereof.

Claim 13 is patentable over Tsaur for the same reasons as set forth above for claims 1 and 2. Additionally, Tsaur fails to disclose or suggest any of the specific ceramides listed in claim 13. Claim 13 is thus patentable over Tsaur for this additional reason.

[15] *See* Tsaur at col. 7, lines 15-57.

Claim 18

Claim 18 depends from claim 1 and further requires the natural fat or oil to be a combination of essential and non-essential fatty acids.

Claim 18 is patentable over Tsaur for the same reasons as set forth above for claim 1. Additionally, Tsaur fails to disclose or suggest that the benefit agent discussed therein could or should be a combination of essential and non-essential fatty acids. Tsaur does state that the benefit agent can be fats and oils, including natural fats and oils, and lists various examples of natural fats and oils.[16] There is, however, nothing in Tsaur that suggests that the natural fats and oils should be a combination of essential and non-essential fatty acids. Claim 18 is thus patentable over Tsaur for this additional reason.

Claims 22-27 and 30-38

Claim 22 is directed to a liquid cleanser composition comprising a lamellar structured liquid comprising from about 30% (by weight) to about 80% (by weight) of a surfactant, from about 1% (by weight) to about 30% (by weight) of a skin protectant, and from about 19% (by weight) to about 69% (by weight) water. The liquid cleanser composition has a viscosity of from about 10,000 cps to about 200,000 cps. The skin protectant is microencapsulated.

Claim 22 is patentable over Tsaur for similar reasons to those set forth above for claim 1, as well as for the additional elements it requires. In particular, Tsaur fails to disclose or

[16] *See* Tsaur at col. 7, lines 19-25.

suggest a liquid cleansing composition having a viscosity of from about 10,000 cps to about 200,000 cps and comprising a lamellar structured liquid and a microencapsulated skin protectant. Nor would there be any apparent reason for one skilled in the art to modify the teachings of Tsaur to arrive at such a composition. As such, claim 22 is patentable over the cited reference under §103(a).

Claims 23-27 and 30-38 depend directly or indirectly from claim 22 and are therefore patentable over the cited reference for the same reasons as set forth above for claim 22 as well as for the additional elements they require.

Claim 31

Claim 31 depends from claim 30 and requires the skin protectant be a polydimethylsiloxane selected from the group consisting of dimethicone, dimethicone gum, cylcomethicone, and combinations thereof.

Claim 31 is patentable over Tsaur for the same reasons as set forth above for claim 22. Additionally, Tsaur fails to disclose or suggest any of the particular polydimethylsiloxanes listed in claim 31. Although Tsaur lists polydimethylsiloxane as one example of a benefit agent that may be incorporated into the compositions described therein, there is no specific disclosure or suggestion of dimethicone, dimethicone gum, or cyclomethicone. Claim 31 is thus patentable over Tsaur for this additional reason.

Claims 42-47 and 51-54

Claim 42 is directed to a liquid cleanser composition comprising a lamellar structured liquid comprising from about

30% (by weight) to about 80% (by weight) of a surfactant, from about 1% (by weight) to about 30% (by weight) of a sunscreen active, and from about 19% (by weight) to about 69% (by weight) water. The liquid cleanser composition has a viscosity of from about 10,000 cps to about 200,000 cps. The sunscreen active is microencapsulated.

Claim 42 is patentable over the cited reference for similar reasons as set forth above for claim 1 as well as for the additional elements it requires. In particular, Tsaur fails to disclose a liquid cleanser composition having a viscosity of from about 10,000 cps to about 200,000 cps and comprising a lamellar structured liquid and a microencapsulated sunscreen active. Nor is there any apparent reason to modify the teachings of Tsaur to arrive at applicants' claimed composition.

Claims 43-47, and 51-54 depend directly or indirectly from claim 42 and are thus patentable over the cited reference for the same reasons as set forth above for claim 42 as well as for the additional elements they require.

B. Claims 8-9, 28-29, and 48-50 are submitted to be patentable over U.S. Patent No. 6,126,954 (Tsaur) in view of WO 01/19949 (Mitra, et al.).

Claims 8-9, 28-29, and 48-50 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Tsaur (U.S. Patent No. 6,126,954) in view of Mitra (WO 01/19949).

Tsaur is discussed above.

Mitra, et al. disclose liquid cleansing compositions in lamellar phase, which possess a lotion-like appearance. The compositions use low salt levels in amphoteric and anionic

surfactants in a structured liquid product to improve the freeze/thaw stability of the composition. Specifically, the compositions comprise a surfactant system that preferably contains at least about 5 wt.% of surface active compounds. The composition also comprises an amphoteric and/or zwitterionic surfactant present at about 3 to 30 wt.%, at least one or more anionic surfactant present at about 2 to 40 wt.%, and a lamellar structurant compound present at about 0.5 to 10 wt.%. The composition has an initial viscosity in the range of about 15,000 to 300,000 cps measured at 0.5 RPM.

Claims 8-9 depend from independent claim 1; claims 28-29 depend from independent claim 22, and claims 48-50 depend from independent claim 42. Claims 8-9, 28-29, and 48-49 further specify specific surfactants present in the claimed compositions, and claim 50 specifies specific sunscreen actives. Claims 1, 22, and 42 have not been rejected under 35 U.S.C. §103(a) over the combination of Tsaur and Mitra, et al. Therefore, claims 8-9, 28-29, and 48-50, which depend from claims 1, 22, and 42, respectively, are patentable for the same reasons as claims 1, 22, and 42.

More particularly, applicants submit that neither of the cited references disclose or suggest microencapsulating any of the components of the compositions described therein. Furthermore, nowhere in the cited references is there any apparent reason to modify or combine the references to arrive at a composition wherein lipid phase components, skin protectants, or sunscreen actives are microencapsulated. For the reasons discussed above, applicants submit that one skilled in the art would actually be lead away from encapsulating the skin benefit agent emulsions described in Tsaur, as doing so would render the compositions of Tsaur unsatisfactory for their intended purpose

(i.e., providing a stable aqueous liquid). Furthermore, the Mitra, et al. reference does not provide (and the Examiner does not articulate) any apparent reason the ordinarily skilled person would encapsulate any of the composition components described therein, or suggest or recognize any benefit in microencapsulating. As neither of the cited references provide any guidance as to microencapsulating, this element of applicants' claims 1, 22, and 42 is completely lacking in both Tsaur and Mitra, et al.

Additionally, applicants note that in general, it would not have been obvious to combine the teachings of Tsaur and Mitra, et al. as Tsaur and Mitra, et al. are in fact opposed in their teachings, and there would be no obvious way to combine the cited references. For instance, as discussed above Tsaur achieves a stable composition through interaction of cationic polymer particles and the skin benefit agent emulsions present in the composition. A structuring agent is not required.[17] In contrast, the Mitra, et al. reference achieves a lamellar phase through use of a structuring agent, which enables the compositions to suspend particles more readily.[18] Tsaur and Mitra, et al. thus achieve stable compositions through different mechanisms, and there is no obvious way to combine these two disparate teachings. Nor is there anything to suggest that the two means of achieving stable compositions would even be combinable.

Additionally, as noted above, the Supreme Court in KSR International Co. v. Teleflex, Inc. has recognized that while an

[17] *See* Tsaur at col. 7, ln. 3-6.

[18] *See* Mitra, et al. at p. 21, lines 9-16.

obviousness determination is not a rigid formula, the TSM (teaching, suggestion, motivation) test captures a helpful insight: A patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the art. Although common sense directs caution as to a patent application claiming as innovation the combination of two known [elements] according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the art to combine the elements as the new invention does."[19] In the instant case, the Examiner has not presented any reasoning as to why the teachings of the cited references should be modified or combined. The Examiner has merely stated that Tsaur and Mitra, et al. are analogous art and therefore many components taught by Tsaur may be considered "structurants" to form said phases in the absence of a showing to the contrary. The Examiner has further stated that Mitra, et al. is relied upon to show equivalence of specific amphoteric and zwitterionic surfactants and that in the absence of unexpected results, it would have been obvious to try known ingredients when the results would have yielded predictable results.

Applicants respectfully submit that these statements cannot be construed as statements regarding motivation to combine references or to modify reference teachings. Specifically, the Examiner has not provided any reasoning whatsoever as to why one

[19] 2007 WL 1237837 at 5. *See also Ex parte Clapp* ("To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.") 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985) (emphasis added).

skilled in the art, in the absence of applicants' disclosure as a blueprint, would modify the teachings of the cited references to microencapsulate components of a lipid phase, a skin protectant, or a sunscreen active, as required by applicants' claims 1, 22, and 42, respectively.

Furthermore, with regard to claim 1 (and dependent claims 8-9), the cited references fail to disclose or suggest a liquid cleanser composition comprising a lipid phase comprising from about 1% (by weight) to about 5% (by weight) of a sterol.

Claims 1, 22, and 42 thus cannot be said to be obvious in view of the cited references. As noted above, claims 8-9, 28-29, and 48-50 depend either directly or indirectly from claims 1, 22, and 42, respectively, and are thus patentable over the cited references for the same reasons as set forth above for claims 1, 22, and 42 as well as for the additional elements they require.

C. Claims 19-20, 39-40, and 55-56 are submitted to be patentable over U.S. Patent No. 6,126,954 (Tsaur) in view of U.S. Patent No. 3,829,563 (Barry, et al.).

Claims 19-20, 39-40, and 55-56 have been rejected yunder 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,126,954 (Tsaur) in view of U.S. Patent No. 3,829,563 (Barry, et al.).

Tsaur is discussed above.

Barry, et al. is directed to cleansing compositions for the hair and skin, which deposit an emollient, conditioning film thereon during washing. The compositions are oil-in-water emulsions and may be in a liquid or semi-solid form. In

particular, the compositions comprise from about 10 to about 70 percent by weight petrolatum, from about 5 to about 30% by weight of one or more organic foaming detergents, from about 1 to about 10 percent by weight of an emulsifier, from about 0.5 to about 5 percent by weight of an organic foam stabilizer, from about 0 to about 20 percent by weight of one or more emollient substances other than petrolatum, and water.

Claims 19-20 depend from independent claim 1; claims 39-40 depend from independent claim 22, and claims 55-56 depend from independent claim 42. Claims 19-20, 39-40, and 55-56 further specify that the liquid cleanser composition (or the lipid phase, in the case of claim 19) comprises from about 0.1% (by weight) to about 4% (by weight) of a surfactant having an HLB of from about 4 to about 8 (claims 19, 39, and 55), and set forth specific examples of such surfactants (claims 20, 40, and 56). Claims 1, 22, and 42 have not been rejected under 35 U.S.C. §103(a) over the combination of Tsaur and Barry, et al. Therefore, claims 19-20, 39-40, and 55-56, which depend from claims 1, 22, and 42, respectively, are patentable for the same reasons as claims 1, 22, and 42. In particular, the cited references fail to disclose or suggest a liquid cleanser composition having a viscosity of from about 10,000 cps to about 200,000 cps and comprising a lamellar structured liquid, and fail to disclose or suggest microencapsulation of any of the components of the compositions described therein. Furthermore, there is no apparent reason for one skilled in the art to modify or combine the reference to arrive at each and every limitation of claims 1, 22, and 42.

As discussed above, the liquid cleanser compositions of the present invention are formulated such that the surfactant present forms a lamellar phase in solution. This allows for

long-term suspension of droplets of oils, particulates, or other components without emulsification of the suspended ingredient.[20]

In contrast to the lamellar structured liquids of the present invention, Tsaur describes stable liquid cleansers that comprise a skin benefit agent emulsion. More particularly, Tsaur state that the dispersed polymer particles and an emulsion of benefit agents interact to provide the physical stability of the liquid composition and to keep the benefit agents from precipitating out of the composition. There is no disclosure or suggestion of using a lamellar structured liquid to suspend agents in the composition.

Nor do Barry, et al. disclose or suggest compositions comprising lamellar structured liquids. As noted above, Barry, et al. is directed to oil-in-water emulsions that may be used as cleansing compositions. There is no disclosure or suggestion anywhere in Barry, et al. that the compositions described therein could or should comprise lamellar structured liquids. With regard to the stability of the compositions in Barry, et al., Barry, et al. state that the particle size distribution of the oil phase of the oil-in-water emulsions must be within certain limits for maximum physical stability and functional efficacy.[21] Thus, Tsuar and Barry, et al., alone or in combination, fail to disclose or suggest lamellar structured liquids, as required by applicants' claims.

In the Response to Arguments section of the Office action, the Examiner states that Barry, et al. is relied upon only to show the use of specific surfactants with HLB values as claimed,

[20] *See* Specification at ¶14-15.

[21] *See* Barry, et al. at col. 2, lines 12-15.

and that applicants have not provided any evidence that suggests the compositions of Barry, et al. would not provide a lamellar phase. However, as stated in MPEP § 2142, the Examiner bears the initial burden of supporting any *prima facie* conclusion of obviousness. For the reasons set forth herein, the Examiner has failed to meet this burden. Rather, it appears the Examiner has simply identified two references that disclose surfactant-containing compositions and come to the conclusion that the references disclose lamellar structured liquids. This conclusion is, however, wholly unsupported by anything other than unsubstantiated assumptions by the Examiner. There is simply nothing in either Tsaur or Barry, et al. that remotely suggests that the compositions described therein are lamellar structured liquids.

Additionally, neither of the cited references disclose or suggest compositions having a viscosity of from about 10,000 cps to about 200,000 cps. As discussed above, the only disclosure of a viscosity in Tsaur is on column 6, which refers to the viscosity of the pre-dispersion, not the viscosity of the stable aqueous liquid in which the skin benefit agents are suspended. There is simply no disclosure of the viscosity of the stable aqueous composition in Tsaur. Nor do Barry, et al. provide any guidance as to the viscosity of the oil-in-water emulsions described therein. Additionally, applicants note that neither of the cited references recognizes the benefits of compositions having a viscosity as set forth in applicants' claims, and in particular fail to recognize the relationship between viscosity and formation of lamellar structured liquids.

Nor do Tsaur or Barry, et al. teach or suggest encapsulating any of the composition components described therein. If anything, the combination teaches away from

encapsulating composition components. As discussed above, one skilled in the art would be lead away from encapsulating the components of the skin benefit agent emulsions disclosed in Tsaur, as it would appear that doing so would render the compositions of Tsaur unsatisfactory for their intended purpose by interfering with the ability of the benefit agent emulsions to interact with cationic polymer particles present in the composition and the formation of a stable aqueous liquid. Barry, et al. does nothing to contradict this teaching, as Barry, et al. fails to disclose encapsulation or recognize any benefit in encapsulation.

Since neither Tsaur nor Barry, et al. teach or suggest compositions comprising lamellar structured liquids, compositions having the claimed viscosity, or microencapsulation, applicants submit claims 1, 22, and 42 are patentable over the cited references.

As noted above, claims 19-20, 39-40, and 55-56 depend from claims 1, 22, and 42, respectively, and are therefore patentable over the cited references for the same reasons as set forth above for claims 1, 22, and 42 as well as for the additional elements they require.

CONCLUSION

For the reasons stated above, Appellants respectfully request that the Examiner's rejections be reversed and that claims 1-20, 22-40, and 42-56 be allowed.

Respectfully submitted,

/Christopher M. Goff/

Christopher M. Goff, Reg. No. 41,785
ARMSTRONG TEASDALE LLP
One Metropolitan Square, 26th Floor
St. Louis, Missouri 63102
(314) 621-5070

CMG/LJH/skb
Via EFS

VIII. CLAIMS APPENDIX

1. A liquid cleanser composition comprising a lamellar structured liquid comprising from about 30% (by weight) to about 80% (by weight) of a surfactant, from about 1% (by weight) to about 30% (by weight) of a lipid phase, and from about 19% (by weight) to about 69% (by weight) water, wherein the lipid phase comprises from about 1% (by weight) to about 5% (by weight) of a sterol and from about 95% (by weight) to about 99% (by weight) of a natural fat or oil, and wherein the liquid cleanser composition has a viscosity of from about 10,000 cps to about 200,000 cps, and wherein the components of the lipid phase are microencapsulated.

2. The liquid cleanser composition as set forth in claim 1 wherein the lipid phase additionally comprises from about 0.5% (by weight) to about 2% (by weight) of a ceramide or ceramide derivative.

3. The liquid cleanser composition as set forth in claim 1 wherein the liquid cleanser composition has a viscosity of from about 25,000 cps to about 100,000 cps.

4. The liquid cleanser composition as set forth in claim 1 wherein the liquid cleanser composition has a viscosity of from about 50,000 cps to about 75,000 cps.

5. The liquid cleanser composition as set forth in claim 1 wherein the surfactant is selected from the group consisting of anionic surfactants, amphoteric surfactants, zwitterionic surfactants, and combinations thereof.

6. The liquid cleanser composition as set forth in claim 5 wherein the anionic surfactants are selected from the group consisting of alkyl sulfates, alkyl ether sulfates, alkali metal or ammonia salts of alkyl sulfates, alkali metal or ammonia salts of alkyl ether sulfates, alkyl phosphates, alkyl glyceryl sulfonates, alkyl sulfosuccinates, alkyl taurates, acyl taurates, alkyl sarcosinates, acyl sarcosinates, sulfoacetates, alkyl phosphate esters, mono alkyl succinates, monoalkyl maleates, sulphoacetates, acyl isethionates, alkyl carboxylates, phosphate esters, and combinations thereof.

7. The liquid cleanser composition as set forth in claim 5 wherein the amphoteric surfactants are selected from the group consisting of betaines, alkylamido betaines, sulfobetaines, N-alkyl betaines, sultaines, amphoacetates, diamphoacetates,

imidazoline carboxylates, sarcosinates, acylamphoglycinates, and combinations thereof.

8. The liquid cleanser composition as set forth in claim 7 wherein the acylamphoglycinates are selected from the group consisting of cocamphocarboxyglycinates and acylamphopropionates.

9. The liquid cleanser composition as set forth in claim 5 wherein the zwitterionic surfactants are selected from the group consisting of 4-[N,N-di(2-hydroxyethyl)-N-octadecylammonio]-butane-1-carboxylate, 5-[S-3-hydroxypropyl-S-hexadecylsulfonio]-3-hydroxypentane-1-sulfate, 3—[P,P-diethyl-P-3,6,9-trioxatetradexopcylphosphonio]-2-hydroxypropane-1-phosphate, 3-[N,N-dipropyl-N-3-dodecoxy-2-hydroxypropylammonio]-propane-1-phosphonate, 3-(N,N-dimethyl-N-hexadecylammonio)propane-1-sulfonate, 3-(N,N-dimethyl-N-hexadecylammonio)-2-hydroxypropane-1-sulfonate, 4-[N,N-di(2-hydroxyethyl)-N-(2-hydroxydodecyl)ammonio]-butane-1-carboxylate, 3-[S-ethyl-S-(3-dodecoxy-2-hydroxypropyl)sulfonio]-propane-1-phosphate, 3-[P,P-dimethyl-P-dodecylphosphonio]-propane-1-phosphonate, 5-[N,N-di(3-hydroxypropyl)-N-hexadecylammonio]-2-hydroxy-pentane-1-sulfate, and combinations thereof.

10. The liquid cleanser composition as set forth in claim 1 wherein the natural fat or oil is selected from the group consisting of Avocado Oil, Apricot Oil, Babassu Oil, Borage Oil, Camellia oil, Canola oil, Castor Oil, Coconut oil, Corn Oil, Cottonseed Oil, Evening Primrose Oil, Hydrogenated Cottonseed Oil, Hydrogenated Palm Kernel Oil, Maleated Soybean Oil, Meadowfoam Oil, Palm Kernel Oil, Phospholipids, Rapeseed Oil, Palmitic Acid, Stearic Acid, Linoleic Acid, Rose Hip Oil, Sunflower Oil, Soybean Oil, Lethicin, PROLIPID 141, and mixtures thereof.

11. The liquid cleanser composition as set forth in claim 1 wherein the sterol is a beta sterol having a tail on the 17 position and having no polar groups.

12. The liquid cleanser composition as set forth in claim 1 wherein the sterol is selected from the group consisting of cholesterol, sitosterol, stigmasterol, ergosterol, C10-C30 cholesterol/lanosterol esters, cholecalciferol, cholesteryl hydroxystearate, cholesteryl isostearate, cholesteryl stearate, 7-dehydrocholesterol, dihydrocholesterol, dihydrocholesteryl octyidecanoate, dihydrolanosterol, dihydrolanosteryl octyldecanoate, ergocalciferol, tall oil sterol, soy sterol

acetate, lanasterol, soy sterol, avocado sterols, sterol esters, and mixtures thereof.

13. The liquid cleanser composition as set forth in claim 2 wherein the ceramide or ceramide derivative is selected from the group consisting of glucosylceramides, acylceramide, bovine ceramides, sphingolipid E, and combinations thereof.

14. The liquid cleanser composition as set forth in claim 1 further comprising an optional ingredient selected from the group consisting of humectants, preservatives, antimicrobial actives, antifungal actives, antiseptic actives, antioxidants, astringents, anti-dandruff agents, biological actives, colorants, deodorants, emollients, film formers, fragrances, lubricants, natural moisturizing agents, skin conditioning agents, skin exfoliating agents, skin protectants, solvents, solubilizing agents, suspending agents, wetting agents, and combinations thereof.

15. The liquid cleanser composition as set forth in claim 1 wherein the lipid phase comprises droplets having a size less than about 30 micrometers.

16. The liquid cleanser composition as set forth in claim 1 wherein the lipid phase comprises droplets having a size less than about 20 micrometers.

17. The liquid cleanser composition as set forth in claim 1 wherein the lipid phase comprises droplets having a size less than about 10 micrometers.

18. The liquid cleanser composition as set forth in claim 1 wherein the natural fat or oil is a combination of essential and non-essential fatty acids.

19. The liquid cleanser composition as set forth in claim 1 wherein the lipid phase further comprises from about 0.1% (by weight) to about 4% (by weight) of a surfactant having an HLB of from about 4 to about 8.

20. The liquid cleanser composition as set forth in claim 19 wherein the surfactant having an HLB of from about 4 to about 8 is selected from the group consisting of sorbitan monooleate, sorbitan stearate, sorbitan monolaurate, polyoxyethylene sorbitan beeswax, polyoxyethylene 2 cetyl ether, polyoxyethylene 2 stearyl ether, polyoxyethylene 2 oleyl ether, and combinations thereof.

22. A liquid cleanser composition comprising a lamellar structured liquid comprising from about 30% (by weight) to about 80% (by weight) of a surfactant, from about 1% (by weight) to about 30% (by weight) of a skin protectant, and from about 19% (by weight) to about 69% (by weight) water, and wherein the liquid cleanser composition has a viscosity of from about 10,000 cps to about 200,000 cps, and wherein the skin protectant is microencapsulated.

23. The liquid cleanser composition as set forth in claim 22 wherein the liquid cleanser composition has a viscosity of from about 25,000 cps to about 100,000 cps.

24. The liquid cleanser composition as set forth in claim 22 wherein the liquid cleanser composition has a viscosity of from about 50,000 cps to about 75,000 cps.

25. The liquid cleanser composition as set forth in claim 22 wherein the surfactant is selected from the group consisting of anionic surfactants, amphoteric surfactants, zwitterionic surfactants, and combinations thereof.

26. The liquid cleanser composition as set forth in claim 25 wherein the anionic surfactants are selected from the group consisting of alkyl sulfates, alkyl ether sulfates, alkali metal or ammonia salts of alkyl sulfates, alkali metal or ammonia salts of alkyl ether sulfates, alkyl phosphates, alkyl glyceryl sulfonates, alkyl sulfosuccinates, alkyl taurates, acyl taurates, alkyl sarcosinates, acyl sarcosinates, sulfoacetates, alkyl phosphate esters, mono alkyl succinates, monoalkyl maleates, sulphoacetates, acyl isethionates, alkyl carboxylates, phosphate esters, and combinations thereof.

27. The liquid cleanser composition as set forth in claim 25 wherein the amphoteric surfactants are selected from the group consisting of betaines, alkylamido betaines, sulfobetaines, N-alkyl betaines, sultaines, amphoacetates, diamphoacetates, imidazoline carboxylates, sarcosinates, acylamphoglycinates, and combinations thereof.

28. The liquid cleanser composition as set forth in claim 27 wherein the acylamphoglycinates are selected from the group consisting of cocamphocarboxyglycinates and acylamphopropionates.

29. The liquid cleanser composition as set forth in claim 25 wherein the zwitterionic surfactants are selected from the group consisting of 4-[N,N-di(2-hydroxyethyl)-N-octadecylammonio]-butane-1-carboxylate, 5-[S-3-hydroxypropyl-S-hexadecylsulfonio]-3-hydroxypentane-1-sulfate, 3—[P,P-diethyl-P-3,6,9-trioxatetradexopcylphosphonio]-2-hydroxypropane-1-phosphate, 3-[N,N-dipropyl-N-3-dodecoxy-2-hydroxypropylammonio]-propane-1-phosphonate, 3-(N,N-dimethyl-N-hexadecylammonio)propane-1-sulfonate, 3-(N,N-dimethyl-N-hexadecylammonio)-2-hydroxypropane-1-sulfonate, 4-[N,N-di(2-hydroxyethyl)-N-(2-hydroxydodecyl)ammonio]-butane-1-carboxylate, 3-[S-ethyl-S-(3-dodecoxy-2-hydroxypropyl)sulfonio]-propane-1-phosphate, 3-[P,P-dimethyl-P-dodecylphosphonio]-propane-1-phosphonate, 5-[N,N-di(3-hydroxypropyl)-N-hexadecylammonio]-2-hydroxy-pentane-1-sulfate, and combinations thereof.

30. The liquid cleanser composition as set forth in claim 22 wherein the skin protectant is a polydimethylsiloxane.

31. The liquid cleanser composition as set forth in claim 30 wherein the polydimethylsiloxane is selected from the group consisting of dimethicone, dimethicone gum, cyclomethicone, and combinations thereof.

32. The liquid cleanser composition as set forth in claim 22 wherein the skin protectant is an organo-functional polydimethylsiloxane.

33. The liquid cleanser composition as set forth in claim 32 wherein the organo-functional polydimethylsiloxane comprises an organo-functionality selected from the group consisting of alkyl groups, amine groups, and polyether groups.

34. The liquid cleanser composition as set forth in claim 22 wherein the skin protectant is selected from the group consisting of silicone gums, silicone elastomers, silicone resins, silicone polyamides, silicone resins, petrolatum, lanolin, acrylates/dimethicone methacrylate copolymers, allantoin, calamine, cod liver oil, escin, oil soluble botanical extracts, kaolin, laponite, zinc oxide, mineral oil, shark liver oil, talc, zinc acetate, zinc carbonate, and mixtures thereof.

35. The liquid cleanser composition as set forth in claim 22 further comprising an optional ingredient selected from the group consisting of humectants, preservatives, antimicrobial actives, antifungal actives, antiseptic actives, antioxidants, astringents, anti-dandruff agents, biological actives, colorants, deodorants, emollients, film formers, fragrances,

lubricants, natural moisturizing agents, skin conditioning agents, skin exfoliating agents, skin protectants, solvents, solubilizing agents, suspending agents, wetting agents, and combinations thereof.

36. The liquid cleanser composition as set forth in claim 22 wherein the skin protectant comprises particulates or droplets having a size less than about 30 micrometers.

37. The liquid cleanser composition as set forth in claim 22 wherein the skin protectant comprises particulates or droplets having a size less than about 20 micrometers.

38. The liquid cleanser composition as set forth in claim 22 wherein the skin protectant comprises particulates or droplets having a size less than about 10 micrometers.

39. The liquid cleanser composition as set forth in claim 22 further comprising from about 0.1% (by weight) to about 4% (by weight) of a surfactant having an HLB of from about 4 to about 8.

40. The liquid cleanser composition as set forth in claim 39 wherein the surfactant having an HLB of from about 4 to about

8 is selected from the group consisting of sorbitan monooleate, sorbitan stearate, sorbitan monolaurate, polyoxyethylene sorbitan beeswax, polyoxyethylene 2 cetyl ether, polyoxyethylene 2 stearyl ether, polyoxyethylene 2 oleyl ether, and combinations thereof.

42. A liquid cleanser composition comprising a lamellar structured liquid comprising from about 30% (by weight) to about 80% (by weight) of a surfactant, from about 1% (by weight) to about 30% (by weight) of a sunscreen active, and from about 19% (by weight) to about 69% (by weight) water, and wherein the liquid cleanser composition has a viscosity of from about 10,000 cps to about 200,000 cps, and wherein the sunscreen active is microencapsulated.

43. The liquid cleanser composition as set forth in claim 42 wherein the liquid cleanser composition has a viscosity of from about 25,000 cps to about 100,000 cps.

44. The liquid cleanser composition as set forth in claim 42 wherein the liquid cleanser composition has a viscosity of from about 50,000 cps to about 75,000 cps.

45. The liquid cleanser composition as set forth in claim 42 wherein the surfactant is selected from the group consisting of anionic surfactants, amphoteric surfactants, zwitterionic surfactants, and combinations thereof.

46. The liquid cleanser composition as set forth in claim 45 wherein the anionic surfactants are selected from the group consisting of alkyl sulfates, alkyl ether sulfates, alkali metal or ammonia salts of alkyl sulfates, alkali metal or ammonia salts of alkyl ether sulfates, alkyl phosphates, alkyl glyceryl sulfonates, alkyl sulfosuccinates, alkyl taurates, acyl taurates, alkyl sarcosinates, acyl sarcosinates, sulfoacetates, alkyl phosphate esters, mono alkyl succinates, monoalkyl maleates, sulphoacetates, acyl isethionates, alkyl carboxylates, phosphate esters, and combinations thereof.

47. The liquid cleanser composition as set forth in claim 45 wherein the amphoteric surfactants are selected from the group consisting of betaines, alkylamido betaines, sulfobetaines, N-alkyl betaines, sultaines, amphoacetates, diamphoacetates, imidazoline carboxylates, sarcosinates, acylamphoglycinates, and combinations thereof.

48. The liquid cleanser composition as set forth in claim 47 wherein the acylamphoglycinates are selected from the group consisting of cocamphocarboxyglycinates and acylamphopropionates.

49. The liquid cleanser composition as set forth in claim 45 wherein the zwitterionic surfactants are selected from the group consisting of 4-[N,N-di(2-hydroxyethyl)-N-octadecylammonio]-butane-1-carboxylate, 5-[S-3-hydroxypropyl-S-hexadecylsulfonio]-3-hydroxypentane-1-sulfate, 3—[P,P-diethyl-P-3,6,9-trioxatetradexopcylphosphonio]-2-hydroxypropane-1-phosphate, 3-[N,N-dipropyl-N-3-dodecoxy-2-hydroxypropylammonio]-propane-1-phosphonate, 3-(N,N-dimethyl-N-hexadecylammonio)propane-1-sulfonate, 3-(N,N-dimethyl-N-hexadecylammonio)-2-hydroxypropane-1-sulfonate, 4-[N,N-di(2-hydroxyethyl)-N-(2-hydroxydodecyl)ammonio]-butane-1-carboxylate, 3-[S-ethyl-S-(3-dodecoxy-2-hydroxypropyl)sulfonio]-propane-1-phosphate, 3-[P,P-dimethyl-P-dodecylphosphonio]-propane-1-phosphonate, 5-[N,N-di(3-hydroxypropyl)-N-hexadecylammonio]-2-hydroxy-pentane-1-sulfate, and combinations thereof.

50. The liquid cleanser composition as set forth in claim 42 wherein the sunscreen active is selected from the group consisting of benzophenone-8, butyl methoxydibenzoymethane,

cinoxate, DEA-methoxycinnamate, digalloyl trioleate, 1-(3,4-dimethoxyphenyl)-4,4-dimethyl-1,3-pentanediene, ethyl dihydroxypropyl PABA, ethylhexyl dimethyl PABA, ethylhexyl methoxycinnamate, ethylhexyl salicylate, 4-(2-Beta-Blucopyranosiloxy) propoxy-2-hydroxybenzophenone, glyceryl PABA, homosalate, mentyl anthranilate, octocrylene, PABA, phenylbenzimidazole sulfonic acid, red petrolatum, TEA salicylate, titanium dioxide, zinc oxide, surface treated titanium dioxide, surface treated zinc oxide, Spirulina Platensis Powder, Vitis Vinifera seed extract, Helianthus Annus seed extract, tocopherol, terephthalidene dicamphor sulfonic acid, drometrizole trisiloxane, benzylylidene malonate polysiloxane, diethylhexylbutamido triazone, methylene-bis-benzotriazolyl tetramethylbutylphenol, disodium phenyl dibenzimidazole tetrasulfonate, bis-ethylhexyloxyphenol methoxyphenyl triazine, diethylamino hydroxybenzoyl hexyl benzoate, and combinations thereof.

51. The liquid cleanser composition as set forth in claim 42 further comprising an optional ingredient selected from the group consisting of humectants, preservatives, antimicrobial actives, antifungal actives, antiseptic actives, antioxidants, astringents, biological actives, colorants, deodorants, emollients, film formers, fragrances, lubricants, natural

moisturizing agents, skin conditioning agents, skin exfoliating agents, skin protectants, solvents, solubilizing agents, suspending agents, wetting agents, and combinations thereof.

52. The liquid cleanser composition as set forth in claim 42 wherein the sunscreen active comprises droplets or particulates having a size less than about 30 micrometers.

53. The liquid cleanser composition as set forth in claim 42 wherein the sunscreen active comprises droplets or particulates having a size less than about 20 micrometers.

54. The liquid cleanser composition as set forth in claim 42 wherein the sunscreen active comprises droplets or particulates having a size less than about 10 micrometers.

55. The liquid cleanser composition as set forth in claim 42 further comprising from about 0.1% (by weight) to about 4% (by weight) of surfactant having an HLB of from about 4 to about 8.

56. The liquid cleanser composition as set forth in claim 55 wherein the surfactant having an HLB of from about 4 to about 8 is selected from the group consisting of sorbitan monooleate,

sorbitan stearate, sorbitan monolaurate, polyoxyethylene sorbitan beeswax, polyoxyethylene 2 cetyl ether, polyoxyethylene 2 stearyl ether, polyoxyethylene 2 oleyl ether, and combinations thereof.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.